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ERNEST A. BEUTLER, ATTORNEY AT LAW  
10 RUE MARSEILLE  
NEWPORT BEACH CA 92660

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**AUG 3 0 2004**

In re Application of :  
Ariyoshi et al. :  
Application No. 10/709,882 :  
Filed: 3 June, 2004 :  
Atty Docket No. SIMTEK6905 :

**OFFICE OF PETITIONS**

**ON PETITION**

This is a decision on the petition filed on 2 August, 2004, which is treated as a petition under 37 CFR 1.53 requesting that the above-identified application be accorded a filing date of 3 June, 2004, with Figures 15 and 16 described in the specification as a part of the original disclosure.

The petition is **dismissed**.

On 3 June, 2004, the application was filed.

On 15 July, 2004, the Office of Initial Patent Examination (OIPE) mailed a Notice of Omitted Item(s) in a Nonprovisional Application stating that the application had been accorded a filing date of 3 June, 2004, but that Figures 15 & 16 described in the specification appeared to have been omitted from the application. A two (2) month period for reply was set.

In response, on 2 August, 2004, the present petition was filed, accompanied by one (1) sheet of drawings containing Figures 15 & 16. Petitioners concede that Figures 15 & 16 were inadvertently omitted from the application as filed, but requests that the application, including Figure 15 and 16, be accorded a filing date of 3 June, 2004, because the omitted figures do not constitute new matter.

Petitioners' argument has been considered, but is not persuasive. The U.S. Patent and Trademark Office (Office) file is the official record of the papers originally filed in this application. A review of the papers originally filed reveals

that no sheet of drawings containing Figure 15 & 16 were filed on 3 June, 2004, since no such sheet of drawings is present among the application papers received on that date. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. As petitioners concede that the omitted drawing figures were not in fact filed on 3 June, 2004, the application cannot be accorded a filing date of 3 June, 2004, with Figures 15 & 16 as a part of the original disclosure.

Moreover, petitioner's assertion that Figures 15 & 16 contain no new matter is not persuasive: the question of new matter is not an issue here. Figures 15 & 16 were simply not filed in the USPTO on 3 June, 2004. Matter included in Figures 15 & 16 may be submitted as an amendment for consideration by the examiner under MPEP sections 608.02(p) and 608.04. In view of the above, the application cannot be accorded 3 June, 2004, as the application filing date with drawing Figures 15 & 16 as a part of the original disclosure.

The application will be processed and examined using only the application papers present on 3 June, 2004. The copy of the one (1) drawing sheet containing Figures 15 & 16 supplied with the present petition will not be used for processing or examination, but will be retained in the application file.

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 3 June, 2004, using the application papers filed on that date.

Telephone inquiries concerning this matter may be directed to the undersigned at (703)308-6918.



Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions